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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

AUG 17 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	MM Docket No. _____
)	
Amendment of Section 73.606(b))	RM- _____
Table of Allotments)	
Television Broadcast Stations)	
to assign Channel 38)	
to Bend, Oregon)	

TO: John A. Karousos, Acting Chief
Allocations Branch, Policy and Rules Division
Mass Media Bureau

PETITION FOR RECONSIDERATION

1. 3-J Broadcasting Company ("3-J") hereby seeks reconsideration of the July 18, 1994 action of the Acting Chief, Allocations Branch, rejecting as unacceptable for consideration 3-J's proposal to allot Channel 38 to Bend, Oregon. 3-J's original proposal was set forth in a Petition for Rule Making filed June 27, 1994. A copy of the letter rejecting that petition is included as Attachment A hereto.

2. As set forth in both 3-J's original petition and the letter rejecting that petition, 3-J's proposal requires a waiver of the Commission's Freeze Order, Advanced Television Systems and Their Impact on the Existing Television Broadcast Service, 52 FR 28346 (July 29, 1987), because of the proximity of Bend to the Portland, Oregon market. 3-J duly requested a waiver of the freeze, demonstrating in its petition that the proposed channel allotment would have no preclusive effect on any potential television channel allotments to Portland.

3. According to the Commission's July 18, 1994 letter

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rejecting 3-J's petition, waivers of the Freeze Order are

limited to noncommercial channels and to licensees which provide "compelling" reasons why the freeze should not apply to their particular situation or class of station. In this case, [3-J]'s request falls within neither exception since it is not an existing licensee seeking a change in its facilities nor does it concern noncommercial educational television broadcasting.

See Attachment A hereto. This is the only explanation offered for the rejection of 3-J's petition. However, that explanation is at odds with established precedent.

4. As quoted above, the rejection of 3-J's petition was based on the assertion that 3-J "is not an existing [commercial] licensee seeking a change in its facilities." But that is not the correct standard. By letter dated March 5, 1990, the Chief, Mass Media Bureau, granted a waiver of the Freeze Order to an applicant -- not a licensee, but merely an applicant -- for a new station in Roseburg, Oregon, even though the proposed channel allotment was subject to the Freeze Order. See KMTR, Inc., Ref. 8940-MLB (March 5, 1990). A copy of that letter is included as Attachment B hereto. In that letter the Chief, Mass Media Bureau, stated that because "we do not believe that operation of [the proposed channel] in Roseburg will preclude use of that channel for ATV service in the Portland area", "we believe that there is sufficient basis for grant of the waiver" of the Freeze Order.

5. The KMTR decision thus establishes two things. First, it clearly demonstrates that waivers of the Freeze Order are not limited to licensees, as opposed to applicants. The

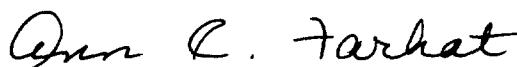
successful waiver proponent in the KMTR situation was not a licensee, and that fact was not held to be a bar to a waiver. Thus, the stated basis for rejection of 3-J's petition -- i.e., that 3-J is "not an existing licensee seeking a change in its facilities", see Attachment A -- is inconsistent with established precedent. It is clear from KMTR that waivers of the Freeze Order are not restricted merely to "existing licensees seeking a change in facilities" and that, conversely, a proponent which does not happen to be such a licensee is nevertheless eligible for such a waiver.

6. Second, the KMTR decision establishes that, with respect to requests for waiver of the Freeze Order, the proper focus is on the extent to which the proposed use of the to-be-allotted channel will preclude use of that channel in the market protected by the Freeze Order. See Attachment B. In the instant case, that factor was not considered at all. But in its petition, 3-J had offered a clear demonstration that the proposed allotment of Channel 38 to Bend would not preclude use of that channel in Portland. In further illustration of that point, included herewith as Attachment C is a Supplement to Engineering Statement which demonstrates that, because of the mountainous topography between Bend and Portland and the likelihood that the transmitter of a Channel 38, Bend, station would be co-located with the transmitters of other Bend stations, Portland would be effectively shielded by the terrain from a Channel 38 operation in Bend. Again, this reinforces 3-J's original assertion, not

contradicted by the Commission or any other information known to 3-J, that the proposed allotment would not preclude use of the channel in Portland, i.e., the market protected by the Freeze Order.

7. Thus, it appears that the rejection of 3-J's proposal was based on an invalid consideration (i.e., 3-J's supposed disqualification because it is not a licensee), and failed to address the only relevant consideration (i.e., the preclusive effect vel non of the proposal), as to which 3-J had offered an unrebutted supporting showing. In view of these factors, 3-J's proposed allotment was completely consistent with relevant, established precedent, and that proposal should have been granted. Accordingly, rejection of that proposal was erroneous, and that rejection should be reconsidered and reversed. 3-J hereby specifically requests such reconsideration and reversal.

Respectfully submitted,



/s/ Ann C. Farhat
Ann C. Farhat

Bechtel & Cole, Chartered
1901 L Street, N.W.
Suite 250
Washington, D.C. 20036
(202) 833-4190

Counsel for 3-J Broadcasting Company

August 17, 1994

ATTACHMENT A

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

IN REPLY REFER TO:

JUL 18 1994

Ann C. Farhat, Esq.
Bechtel & Cole, Chartered
1901 L. Street, N.W.
Suite 250
Washington, D.C. 20036

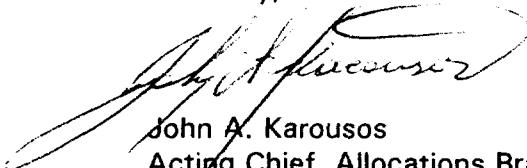
Dear Ms. Farhat:

This is in response to the petition for rule making which you submitted on behalf of 3-J Broadcasting Company requesting the allotment of UHF TV Channel 38 to Bend, Oregon, as the community's fourth local and second commercial television channel.

You state that Bend is located 194.1 kilometers from the Portland, Oregon, reference coordinates and thus your request is subject to the Freeze Order issued in connection with the Commission's rule making concerning advanced television technologies. See Advanced Television Systems and Their Impact on the Existing Television Broadcast Service, 52 FR 28346, July 29, 1987. You contend that a waiver of the freeze should be granted in this case because Channel 38 at Bend would have no preclusive effect on the possible Portland allotments since the channel is already precluded by the existence of Portland Channels 24, 30 and 40.

The Commission's Freeze Order does permit waiver requests to be considered on a case-by-case basis. However, these requests are limited to noncommercial channels and to licensees which provide "compelling" reasons why the freeze should not apply to their particular situation or class of station. In this case, 3-J Broadcasting Company's request falls within neither exception since it is not an existing licensee seeking a change in its facilities nor does it concern noncommercial educational television broadcasting. Therefore, the request of 3-J Broadcasting Company to allot Channel 38 to Bend, Oregon, is not acceptable for consideration at this time.

Sincerely,



John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

ATTACHMENT B

Public Ref. Room
Rm. 239

FCC MAIL SECTION
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554
MAR 5 3 46 PM '90

IN REPLY REFER TO:

8940-MLB

MAR 05 1990

KMTR, Inc.
P.O. Box 7308
Eugene, OR 97401

Re: Channel 36
Roseburg, Oregon
BPCT-881021KG

Gentlemen:

This is with respect to your above-captioned application for a new commercial television station to operate on Channel 36 in Roseburg, Oregon.

On July 16, 1986, the Commission imposed a "freeze" on applications for new television stations within the minimum co-channel separation distances from 30 designated television markets. Advanced Television Systems, Mimeo No. 4074 (released July 17, 1987) (hereafter referred to as the "Freeze Order"). The "freeze" was imposed because the high densities of existing television stations in those markets limited the spectrum available for high-definition television and advanced television ("ATV") service there, and the Commission wanted to preserve its spectrum allocation options for such ATV use. Consequently, all new television proposals for communities within 174.5 miles (280.8 kilometers) (for UHF) and 189.5 miles (304.9 kilometers) (for VHF) of Portland, Oregon, are subject to the "freeze." Since Roseburg is 162.4 miles (261.3 kilometers) from Portland, it is therefore within the "freeze" area, and you have requested a waiver.

In support of your waiver request, you argue that channel allotments for Channel 40 in Portland and Channel 21 in Astoria and the operation of KECH-TV on Channel 22 in Salem preclude the use of Channel 36 in Portland. You therefore conclude that use of Channel 36 in Roseburg could be permitted. Additionally, you state that the availability of Channels 58, 59, 60, 61, 65, and 66 in the Portland area would allow sufficient spectrum for ATV use.

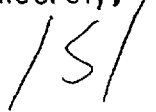
The existence of other channels in or near a listed city that would preclude the construction of a new station there because of UHF "taboos" would not be a bar to the use of the channel for advanced television. Consequently, the existence of Channels 22 and 40 in Portland and Channel 21 in Astoria would have no impact on the use of Channel 36 in Portland for ATV purposes. Further, it is unclear what you mean when you argue that Channels 58-61, 65, and 66 are available for ATV use, since none of those channels are currently vacant allocations in the Portland area. In any event, Roseburg is located close enough to the edge of the 174.5-mile "freeze" radius around Portland so that we do not believe that

- 2-

operation of Channel 36 in Roseburg will preclude use of that channel for ATV service in the Portland area. Consequently, we believe that there is sufficient basis for grant of the waiver.

Accordingly, for the reasons stated above, your request for waiver IS GRANTED, and your application will be accepted for filing in due course.

Sincerely,

A handwritten signature in dark ink, appearing to be 'RS' or 'RJS' with a stylized flourish.

Roy J. Stewart
Chief, Mass Media Bureau

cc: John Crigler, Esq.

ATTACHMENT C

McCLANATHAN and ASSOCIATES, INC.

PROFESSIONAL ELECTRICAL ENGINEERS
P.O. BOX 939 - PORTLAND, OREGON 97207-0939
TEL: (503) 246-8080 FAX: (503) 246-6304

SUPPLEMENT

to

ENGINEERING STATEMENT

for

3-J BROADCASTING COMPANY

concerning

PETITION FOR RULE MAKING

This statement is a supplement prepared for 3-J Broadcasting Company (3-J) relative to a petition to amend the TV Table of Assignments 47 C.F.R. Section 73.606(b) of the Rules and Regulations. The petition requests that TV channel 38 be added to Bend, Oregon as its fourth TV allocation and second commercial allocation.

Bend, Oregon is located 194.1 kilometers from the Portland, Oregon reference coordinates and is subject to the Freeze Order issued in connection with the Commission's rule making concerning ATV technologies. The Freeze Order requires a separation of 280.8 km.

There is no antenna site that will meet the Freeze Order separation requirement and provide a 80 dBu City Grade signal contour over the city of Bend. The antenna sites for the existing two TV stations serving Bend, KOPB-TV, channel *3 and KTVZ, channel 21, are on Awbrey Butte in Bend. It is expected that the proposed channel 38 antenna, if allocated to Bend by the Commission, would also be located on Awbrey Butte at coordinates 44-04-41N, 121-19-57W. The distance and direction from Awbrey Butte to the Portland reference coordinates are 191.3 km at an azimuth of 328.3 degrees.

The attached three radial profile graphs show the line-of-sight profiles from the Awbrey Butte antenna location in Bend to Portland on the 328.2 degree radial and for the 323.3 and 333.3 degree radials. These radial profile graphs show that the Cascade Mountains intervene between the Bend and Portland TV coverage areas providing effective terrain shielding between the two service areas. The topology of these Cascade Mountains should permit operation of channel 38 in Bend without precluding use of this channel for ATV service in the Portland area.

Respectfully submitted,

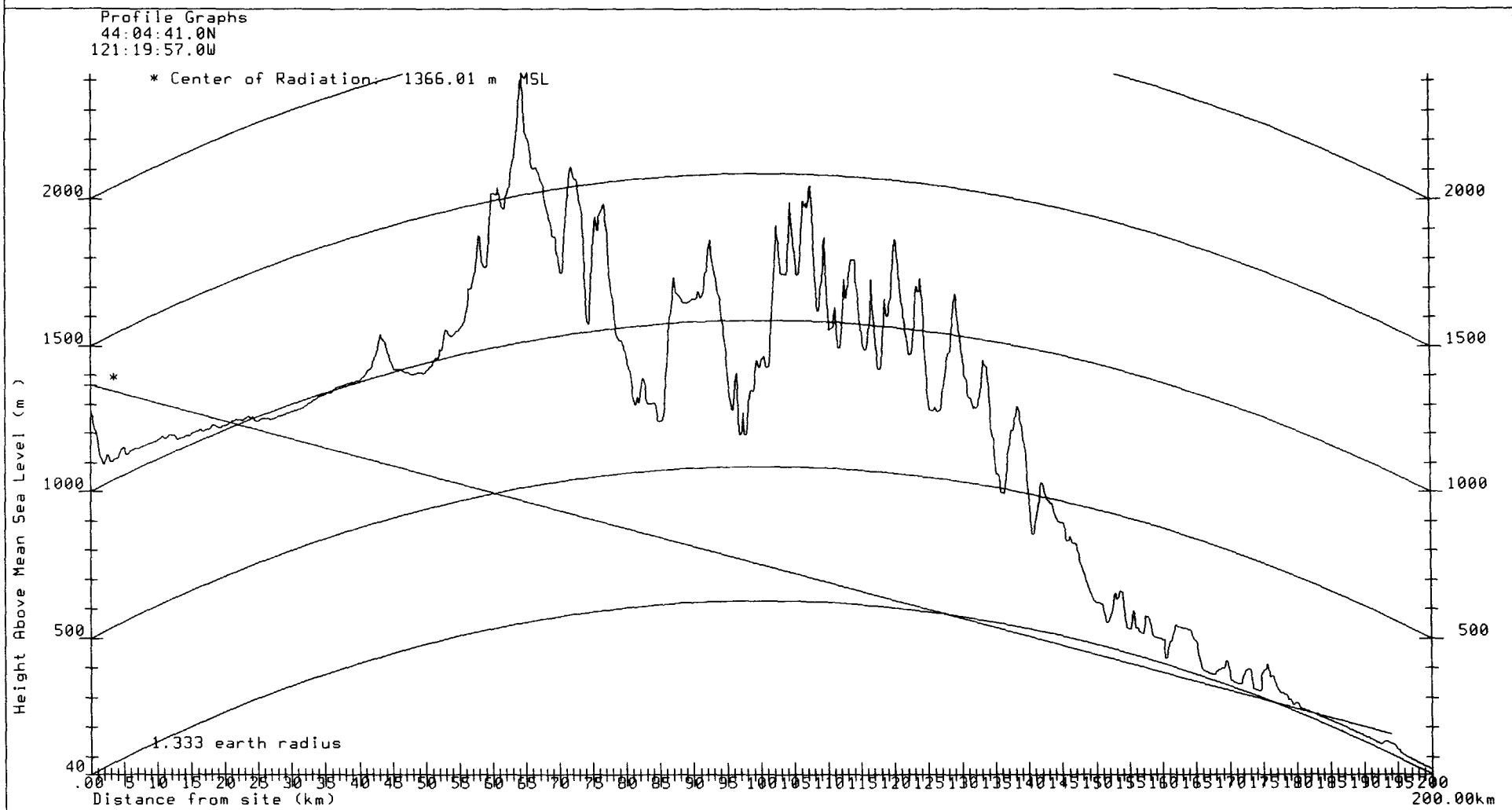


Robert A. McClanathan, P.E.
McClanathan and Associates, Inc.
Professional Electrical Engineers
P.O. Box 939
Portland, OR 97207

August 15, 1994

3-J Broadcasting Company
Channel 38
Bend, OR
Bend - Portland Profile Graph

Page 1
TERRAIN PROFILE GRAPH
Azimuth 323.3

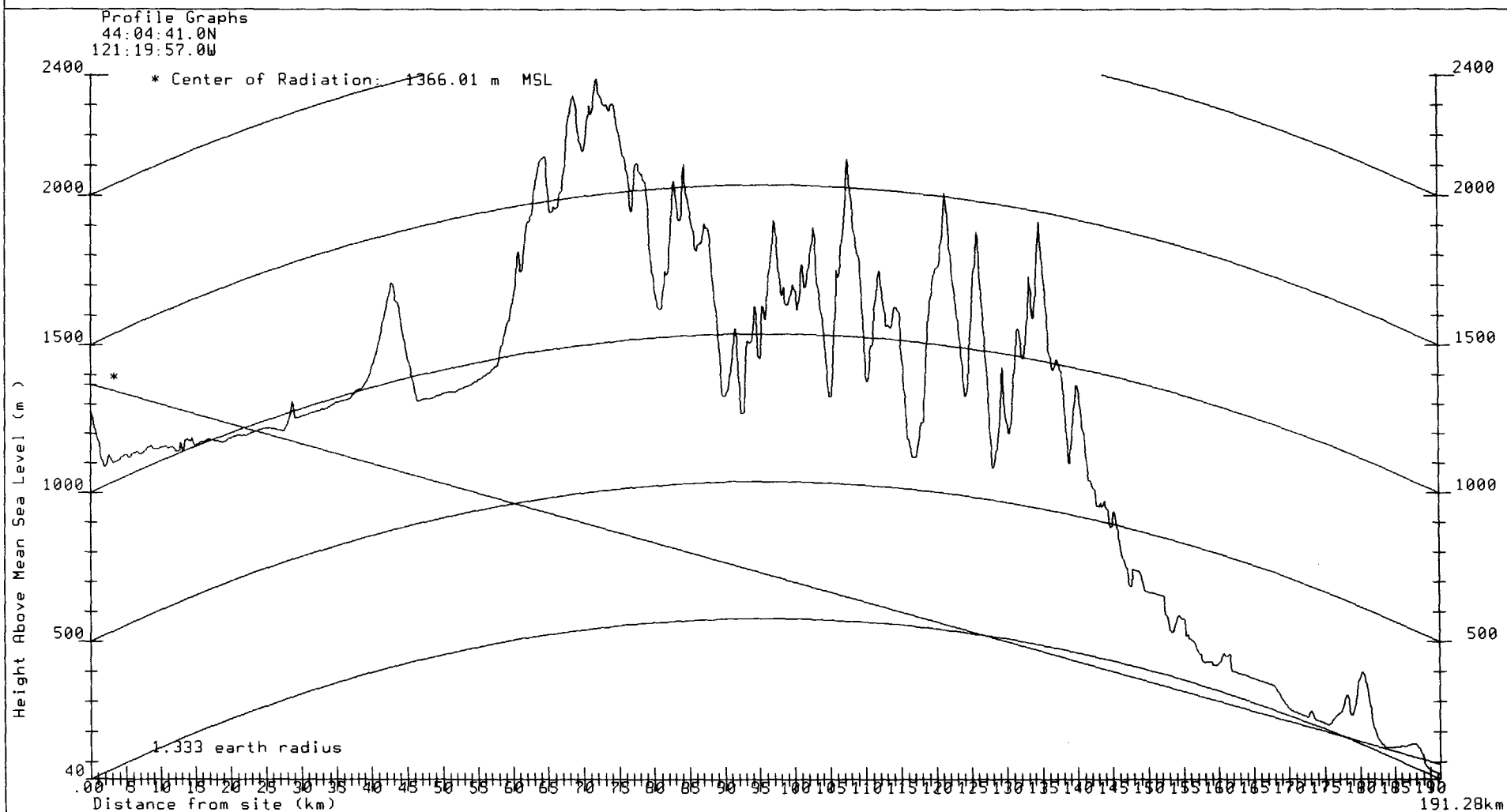


Elevation values from:
3-second elevation data

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3-J Broadcasting Company
Channel 38
Bend, OR
Bend - Portland Profile Graph

Page 2
TERRAIN PROFILE GRAPH
Azimuth 328.3

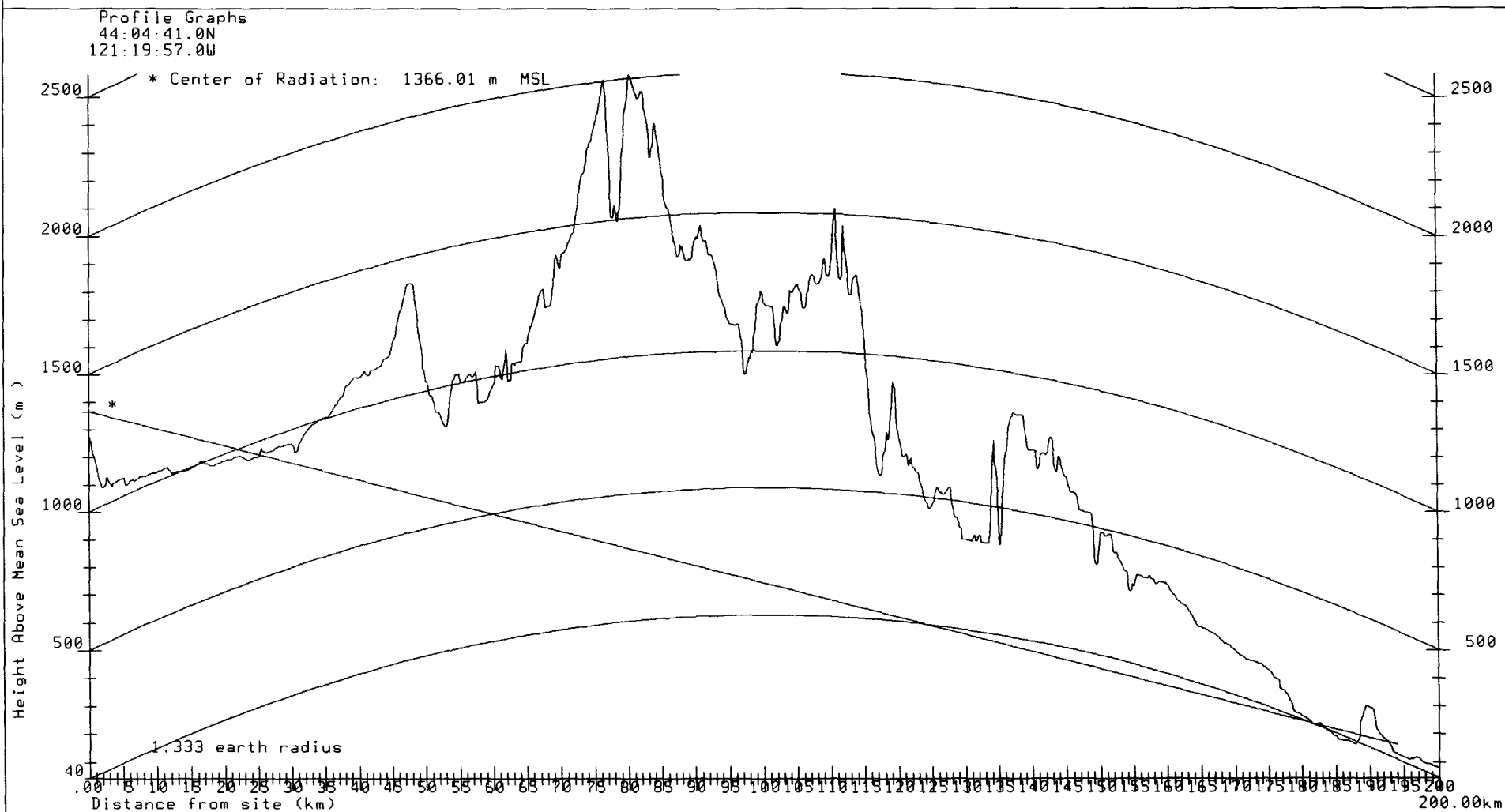


Elevation values from:
3-second elevation data

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3-J Broadcasting Company
Channel 38
Bend, OR
Bend - Portland Profile Graph

Page 3
TERRAIN PROFILE GRAPH
Azimuth 333.3



Elevation values from:
3-second elevation data

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